

9-28-1962

## Dudley Morris to Parker, Time Inc., 28 September 1962

Dudley Morris

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Rush Rush Rush

1962 SEP 28 PM 6 37

to:Parker, time inc, wux atlanta, atlanta wants re-run.

for:Nation(requested)

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interposition. (the following is filed in conjunction with Marsh Clark's

talk with attorney General patterson. Judge Russel Moar of Hinds County

is one of Barnett's brain trust. TRUSTERS and legal advisors. Everything in

The file may be used any way you see fit, but Moar requested that

under no circumstances would there be any reference to him.)

### INTERPOSITION

~~The tangled legal~~ In the center of the tangled legal web that surrounds the drama of James Meredith's attempt to desegregate

the University of Mississippi is the doctrine of interposition.

Only it is not really a doctrine; merely a legalistic way ~~of explaining~~

~~of explaining~~ a State government's refusal

to comply with the Federal Judiciary. The justification of interposition

is the defiance itself. Said Judge Russel Moar of ~~Miss~~ Jackson, Mississippi

"The rational for defying the Federal Courts and supporting Barnett

is interposition itself."

~~But~~ The State of Mississippi, said Moar ~~was~~ interposed

its power between the University and ~~the Federal Government~~

and the Federal Government to block Meredith's admission to classes,

because

~~because~~, "Interposition was the only recourse left and it

was a legal recourse. It invested in the people a faith in their



faith in the governor and prevented mob violence."

But Moar <sup>argued</sup> ~~explained~~ there was <sup>historical backing</sup> ~~ample legal precedent~~ for the ~~Sixty-Sixth~~ State's action. The first act of interposition he said (all his facts should be checked he was hazy on <sup>dates</sup> ~~what was happening~~) was by the State of Kentucky in 1799 when the ~~the~~ state legislature passed a resolution and interposed itself between the people and the Federal government <sup>to nullify</sup> ~~because of~~ the alien-sedition act. A year later James Madison ~~drafted~~ drew up a similar resolution for Virginia which was also sanctioned by the ~~the~~ legislature. And in 1810, the Judge said, <sup>met at</sup> ~~several~~ New England States <sup>Harford</sup> ~~met at~~ the ~~Harford~~ Convention and passed an interposition act ~~against~~ against taking part in the War of 1812. None of these acts were ~~pr~~ ever tested. The alien sedition laws were revoked, the war of 1812 turned out <sup>to</sup> ~~it~~ be a ~~stalemate~~ stalemate.

Then in the 1850's a midwestern State (Moar could not remember which) <sup>issued</sup> ~~interposed~~ a writ of habeas corpus to rescue a newspaper-  
man who had been arrested by a Federal Marshal, for ~~for~~ leading a group of people who had been freeing slaves. A ten year court battle followed that was finally decided by the civil war. <sup>and the abolishment of slavery</sup> Then in 1880 there was a contest between State and <sup>Federal authority</sup> ~~Federal~~ power in Iowa over the <sup>grant</sup> ~~legality~~ <sup>grants</sup> of land made to the railroads. The State Supreme Court affirmed the grants. The case was appealed to the



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United States Supreme Court <sup>was</sup> and affirmed. Sometime later the

State's Supreme court membership was changed and the case was heard

When the decision went against the railroads

~~again~~ again. It was reappealed to the U.S. Supreme Court which reversed

and affirmed the grants. Then the same <sup>thing</sup> ~~thing~~ happened again. After the third

time around, the U.S. Government just gave up the fight.

<sup>These cases were</sup> Moar thought that ~~this~~ was ample legal precedent. And he pointed

out that it really did not matter if it had always been successful

in the past as laws were only as successful as the men who carried them

out. Or defy them we would add. So, Mississippi feels that the doctrine

of interposition can be successful and valid only if the State vigorously

applies it. This the governor is doing. <sup>#1</sup> ~~Insert~~

<sup>The other</sup> ~~However, a standard argument that Mississippi legal~~

<sup>map (thrown)</sup> ~~can throw up in defense of interposition~~ <sup>is a claim that it is</sup> ~~is that it is a stand~~

<sup>a stand</sup> in defiance of the Supreme Court to protect the constitution. The Meredith

case they argue, has little to do with it. They claim that ~~there is~~

the motivating force ~~in the issuance of the proclamation~~ behind the proclamation

was <sup>neither</sup> ~~neither~~ racial nor political but a desire to preserve states rights.

" What we want is a consitutional <sup>debate</sup> ~~debate~~, " said the ~~governor~~ the Judge .

And after the State lost out in court the only way to continue it was to use

interposition. <sup>State officials feel</sup> ~~They are on~~ they are on solid -



Insert

Barnett's ~~constitutional~~ constitutional rational for invoking interposition is that ~~the 10th ammendment specifically states that~~ <sup>says</sup> ~~reads~~ the 10th ammendment ~~specifically states that~~ that all powers not specifically granted to the Federal government are reserved for the states. And by this he means that all powers which are not granted in ~~written~~ writing. ~~There for~~ <sup>There</sup> the Federal government in his ~~tyx~~ <sup>thinking</sup> ~~thinking~~ is enroaching on state perogitive by ~~try~~ trying to desegregate the schools. The little matter of ~~unintentionally~~ ~~under the 14th ammendment~~ the 14th ammendment is glossed over. Moar said ~~that~~ that he saw no conflict between the two.



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for defying the <sup>government</sup> ~~government~~. "This was something that was much in need.

If the 10th ammendment is no longer a provision of the consitution, "said

Moar, "then we ought to know it. We have a true instance ~~where the state~~

~~instance~~ of a test of this, because basically the University is

something operated soley by the State." ~~instance of the state~~

~~instance~~ The arguement continues that if the Federal government

can regulate schools, they can regulate churches, and pretty soon they

will be regulating everyone's home life. In the land of the White

Citizens Council this struck ~~as~~ a little off key. Moar continued

to explain that <sup>one reason</sup> interpositon was declared becuase the <sup>crisis</sup> ~~crisis~~ was

a consitiutional question. The difficulty he said was in getting

it <sup>viewed</sup> ~~viewed~~ as such. The race issue he complained, obscured the real issue.

But the real issue is race, though there is certainly

a good deal of strong states rights <sup>mixed in</sup> ~~sentiment~~. Mainly there is ~~just~~ <sup>just</sup> ~~first~~

<sup>sentiment x</sup> ~~sentiment~~ though, as <sup>Barnett's</sup> ~~instance~~ Barnett's position fails to recognize

that the Suprme Court on numerous occasions has <sup>held</sup> ~~held~~ the doctrine null

and void, and that all this was really settled by the <sup>Civil War</sup> ~~Supreme Court~~.

However, they are convicned they are right, and whether or not they

have adequate reasons to back up their case they are bound and

determined to see this thing ~~through~~ through.

~~hope this is some help. Moar was not to talkitive and~~